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Employee Forums in the UK: Friend or Foe of Trade Unions?

Michael Whittall, Alan Tuckman

With a tradition of informing and consulting employees resting on a single union channel, the 2002 EU Information and Consultation (ICE) Directive was bound to have a significant impact on employee relations in the UK. Undoubtedly, the works council as an institution, or employee forum as it is often referred to in the UK, represents a totally new departure in UK employment relations. The article specifically focuses on the repercussions employee forums might have for trade unions. We focus on two companies which have both recently founded employee forums to comply with ICE regulation. We ask whether such forums should be considered as posing a threat to British trade unions, or platform for revitalising their position within the workplace.

Key words: European Information and Consultation Directive, works councils, trade unions, British industrial relations, employee representation

1. Introduction

Until recently employee representation in Britain was seen almost exclusively in terms of trade union channels of collective bargaining. As in other European countries, the traditional British industrial relations landscape has undergone drastic change in recent times – so much so that the word “tradition” often appears redundant, a term that describes a golden age of collective employee representation long past. In making such a claim we are by no

means suggesting the existence of an employment representative abyss. On the contrary, parallel to these developments the last decade or so has seen an increased awareness of other forms of workplace representation. While trade union membership has declined in Britain since the 1980s, currently around 28% (Carley et al. 2007,), alternative forms of employee relations have come to the fore, such as the employee forum, a quasi-continental works council.

Employee forums are the product of the European Union Information and Consultation (ICE) Directive (2002). Coming into force in the UK on 6 April 2005, ICE represents a major departure in British industrial relations. As Hall (2005: 104) notes, employees in the UK have for the first time ‘the right to insist on being informed and consulted by their employers on a range of key business, employment and recruiting issues’. Moreover, employee forums in-part represent the bifurcation of British industrial relations. As in other countries where such systems prevail, most notably in Germany (Whittall 2005), questions arise concerning the relationship between works councils structures and trade unions. In the context of British industrial relations where the workplace has always been the epicentre of trade union organisation, the employee forum may have significant consequences for organised labour (Watling/Snook 2003).

Acknowledging that there exists a natural tension between plant and trade union level representation, referred to in the context of German works councils as *Doppelloyalität* (double loyalty) (Whittall 2005), the article considers the future of trade unionism in two companies which have recently founded employee forums. At the heart of the article is the question whether employee forums represent, at least potentially, platforms for re-establishing trade union collective representation within the workplace. The crux of the question involves discerning whether this new organisation, one often created by management, represents an environment in which trade union representation might flourish, or one where employment terms and conditions remain individualised, and relations to management, at least on the surface, marked by apparent harmony. The latter scenario clearly implies trade union exclusion, the creation of a trade union “free-zone”

Locating the role of employee forums in today’s British industrial relations system, specifically whether they represent a threat to an already de-

pleted trade union movement; requires a better understanding of how they function, in particular the nature of the relationship between management and employee forum delegates. To this end we draw heavily on Hyman's (1997) representative framework, a model designed to offer a conceptual understanding of the changing face of employee representation in the UK. Central to Hyman's framework are the notions of autonomy, legitimacy, and efficacy, each variable a tool for discerning whether these new employee forums represent a collective voice independent of management's agenda.

After offering a short insight into the respondents interviewed, the article provides a brief description of British industrial relations, focussing specifically on the role and current state of trade unions in the UK. The article then outlines the main features of Hyman's employee representation framework. This is followed by an analysis of two case studies, Isar AG and Interbank, both from the finance sector. Finally, the conclusion considers the relationship between trade unions and employee forums. Here we argue that, despite these bodies often being established by management in an attempt to practice trade union avoidance, such an exercise appears to open the 'Pandora's box' out of which employee collective representation may emerge that has consequences contrary to management's initial intentions.

2. Methods

Based on two separate pieces of research, each assessing developments of non-standard forms of employee representation in the finance sector, the researchers applied a number of research methods. In the case of Interbank, a longitudinal analysis, a mixture of individual (with chair) and group (with chair and other Forum delegates) interviews took place on and off-site. These lasted between 30 minutes and two hours. In addition to interviews with 3 members of the HR department and an regional trade union officer, the researcher also had access to an array of documentation.

As for Isar AG the responsible researcher conducted interviews on site with all existing Forum delegates, five in total over a three day period. Using semi-standard and unstructured interview practices, the interviewer spent between 2 and three ours with each respondent at Isar AG's two London

sites. Furthermore, the respondents provided documents pertaining to the Forum, including a copy of the agreement and copies of the Forum's newsletter. Interviews were also conducted with the HR and assistant HR manager. Correspondence with these two actors also occurred over a one year period.

3. Changing face of UK Employment Relations

The UK employment relations system has been framed by a historical pattern in which the relative fortunes of actors, more so than in continental Europe, have been closely linked to the economic cycle. Specifically this involves the fact that British employee relations have been marked by management's willingness to share power, a willingness that comes to the surface in economically prosperous times but soon disappears when the economy heads into recession. As a consequence the British system has long been characterised by a shifting 'frontier of control' in which legislative measures, irrespective of changing historical contexts, have not sustained the influence of labour and capital (Hyman 1995). As a consequence of this absence of direct state involvement (statutory framework in British employment relations), what Flanders (1974) referred to as voluntarism, led to the emergence of a single channel of employee representation in the form of trade unionism. Until recently this "single channel" remained the main feature of employee relations in the UK.

However, a combination of globalisation (decline in British industry), and the arrival of a government committed to challenging the principles of British voluntarism under Margaret Thatcher, have undermined the power and influence of trade unions. Although the Blair Government's 1999 Employment Act attempted to reverse the process of decline in collective bargaining and trade union membership by introducing a statutory recognition procedure, the Act's impact has been modest to date (Gall 2007). Today, trade union membership, which peaked at about half the working population around 1980, is now down to less than 29 per cent of employees. Although this represents a relatively small decline in membership in the public sector, it masks a collapse in the private sector where membership density is now down to 16.6 per cent (Grainger/Crowther 2007: 1-4). In the finance sector

union membership has been very high in the high street clearing banks and parts of insurance, although this has tended to be exceptional for the finance sector where unions' presence and collective bargaining remained a rarity in commercial and investment banking (Storey et al. 1997; Cressey/Scott 1992; Gall 1993). De-regulation of the finance and banking sector under the Thatcher Government in the 1980s not only allowed the disintegration of traditional boundaries between different sorts of financial institution and mergers of different companies (which saw the integration of unionised and un-unionised companies across the finance spectrum), but also the revision of working practices resultant from the relocation of a large proportion of the sector's workforce into hard to unionised call centres (Gall 2005).

Undoubtedly, these developments contrast greatly with the past. The series of Workplace Employment (initially Industrial) Relations Surveys (WERS) since the 1980s (Millward et al. 2000; Kelsey et al. 2006; also Blanchflower et al. 2006) indicate the long term decline of collective bargaining. More specific national bargaining effectively disappeared in the 1980s, and while some shift to company wide agreements occurred, the fact remains that a mere fifth of employees in the private sector are currently covered by collective agreements (Grainger/Crowther 2007).

The rolling back of British industrial relations, and specifically the decline of trade unionism, led some writers to talk about the emergence of "representation gap" (Towers 1997). Without a doubt there is some truth in such an assertion. Nevertheless it would be wrong to over-stress this point. Certainly, in the 1980s and 1990s a growth in interest in new consultation arrangements could be observed. On the one hand this would appear as a consequence of recession (Marchington/Armstrong 1986), management eager to take advantage of trade unions' woes. On the other hand, however, the changing landscape of British employment relations owes a lot to the emergence of the European Commission's commitment under Delors to expand Europe's role in the area of employee relations. Clearly, the passing of the ICE Directive, a piece of legislation that introduced a quasi-form of continental works councils into the British context (Hall 2005), may have wide ranging repercussions for the British system.

Although there is no hard quantitative evidence to indicate the impact of ICE, the Department for Business Enterprise and Regulatory Reform suggests that many companies are beginning to show interest in the Directive. And while such interest from companies may be an indication of managements' willingness to comply with the Directive, it also represents an independent initiative to limit the voice of such employee bodies.

New alternative forms of employee representation, certainly those established with the arrival of ICE, represent 'major implications for the patterns of employee representation and trade union organising strategies [and] could lead to the biggest change in workplace relations for a generation' (Hall 2005: 103). For this reason, Trade Union Confederation though welcoming the ICE Directive's transposition into British law in 2005, is more than conscious that employee forums arising from ICE contain certain dangers for British unions (Hall 2006), such bodies potentially used by management as a barrier to independent employee representation. It remains to be seen then whether alternative avenues of employee representation, specifically employee forums which have emerged since the arrival of ICE, either create an environment in which British trade unions can once again flourish, or rather act as a barrier to trade unionism.

4. Framework for the analysis of employee representation

In 1997 Blair's 'New' Labour Government replaced the Conservatives with the promise of opting into EU employment regulation and the possibility of reversing the fortunes of trade unions in Britain. In this context Hyman (1997) published a predictive future of employee representation in what he termed Britain-in-Europe. The analysis rests heavily on the UK tradition of a single channel of representation but recognises the likelihood of some move towards a 'Europeanization' with the emergence of a dual system incorporating some form of direct representation, similar to a works council. At the time there was some talk of the establishment of works councils in the UK, something which might complement or support the revitalisation of trade unions, or might act as a barrier to their revival. In the paper Hyman (1997)

conceptualises ‘interest representation’ in terms of autonomy, legitimacy and efficacy of the employee representatives and representative system.

Autonomy, independence from the employer, has proved the main concern with the new representative forums which have been established in Britain (Butler 2005; Terry 1999; Gollan 2007) and, as we shall see, has also been important in shaping the development of our case study forums. A central issue with such bodies involves the extent forums are the articulation of a coherent employee voice independent of management – who invariably bankroll such bodies – or a voice for management in conformance with regulation and an attempt to incorporate employees and dissipate any minor conflict. A common comment, echoed early in one of our cases, is that they spend all their time discussing trivia – car parking and sausages in the canteen – rather than the major strategic direction of the company which EU policy suggests.

The legitimacy of representation, the ‘precondition of the representivity of representatives’ is ‘gained and sustained by a record of delivering the goods’ (Hyman 1997: 310). Thus the employee representatives may gain legitimacy by the process of election, but must sustain it amongst their electorate – the employees who they represent – through their activities and achievement in office. In this sense the legitimacy of representatives is also based on their efficacy, their effectiveness in office.

Efficacy, a “‘self evident’ concept but also complex and multifaceted” (Hyman 1997: 311), Hyman conceptualised in terms of the ability to acquire relevant information (intelligence), formulate policies coherently and dynamically (strategically), and to implement them appropriately. However it assumes a position independent of, and in opposition to, that of management, so that there is linkage here perhaps to a process of interest mobilisation (Kelly 1998). In this context where there may be an assumption of common interest which may be a mobilisation in favour of management interest. It may be that:

All three elements of interest representation are commonly viewed as subject to recent challenges which are likely to persist and perhaps intensify in the future. Changed management policies (strategies?) threaten the autonomy of representative institutions from the employer. More diversi-

fied patterns of employee interests intensify the problems of filtering and aggregating constituents' expectations. This in turn contributes to a legitimisation gap, as does the difficulty of satisfying these expectations in a harsher environment. Delivering results in hard times appears to require enhanced organizational capacity when representative institutions (trade unions, certainly) are in general forced to juggle with depleted resources. Devising new pathways to effective intelligence, strategy and competence may be crucial in their future. (Hyman 1997: 311)

Thus to examine the efficacy of employee representation we are required to look at not just the autonomy of these representatives, i.e. that they are an authentic and independent representative voice, but also their ability to mobilise and to act independently. That is, that they are not purely a filter for information passed between employees and managers, but also able to explore, analyse, and judge this information and act on it. However, in examining the efficacy of such a relationship we need to explore – as Hyman suggests – the levels at which such consultation occurs, the structure of the relationship as well as of the employee representative system, the process of representation – to what extent is it an informed and meaningful interchange – and who sets the agenda of the exchange and how. It is this framework that we deploy in the examination of our case studies.

5. Case Studies

5.1 Isar AG

Isar AG is a subsidiary of a major German multinational involved in financial services. Based at two sites in London, one in the financial district and the other in Canary Wharf, the UK subsidiary has gone through major changes in recent years following expansion in the 1990s and recession after the stock market crash in 2001. Initially, Isar AG consisted of a small office of around 20 employees. Today it has a combined workforce of well over 500 workers. Expansion reflects the company's policy of developing its global portfolio able to adapt to new high risk market conditions. A central aspect of Isar AG's commitment to change involves developing a new working environment, one which is 'a little bit more dynamic, a business focussed organisation' according to the UK HR manager. Such dynamism is designed to

replace the bureaucratic, 'civil servant', mentality that had prevailed in the company.

To facilitate such change, an employment strategy consisting of four factors has been implemented. The first concerns an employment drive focussed on hiring young ambitious graduates. Next, parts of the UK subsidiary were moved to a state of the art office complex. This modern open-plan working environment is not only designed to create synergies between the different business units, but also communicate that a new regime is in place. The third involves a higher degree centralisation, the German headquarters increasingly overseeing the day-to-day running of the UK subsidiary. Finally, another key change involved the setting up of a staff forum.

Initiated by the UK personnel department in 2006, the UK HR manager had to fend off stiff opposition from both central and local management over the establishment of the forum. However, HR was able to make a strong argument for such a body:

There were two drivers behind the thinking of the Staff Group; one was legislation (information and consultation directive)... it was felt that a pre-emptive approach would be better. By not waiting until employees called for such a Forum, management would be in a position to determine how such a body should work – ultimately its remit. Secondly it was felt that such a forum would be a good means of getting employees' "feedback".

The last point, 'employees' feedback', was of specific importance for the HR department. Conscious that the UK subsidiary had gone through – and was still going through – a major period of change, HR felt the staff forum would be a good instrument to manage such change. As is implicit in such a stance, this newly founded body was brought into life first and foremost to assist management rather than offer employees the chance to have their views heard. And as will be demonstrated below, this fact had far reaching consequences for the autonomy, legitimacy and efficacy of the Isar AG staff forum

Though the forum for the very first time provided employees with the chance to raise issues, the issues that employees were allowed to address at the staff forum were strictly controlled by management. The constitution, drawn up together with an external law firm, excluded consideration of anything relating to terms and conditions of employment:

[T]he key parameters were set by me and the MD before discussions took place within the Forum. It was agreed that the Forum would not discuss individual pay or pay related issues, benefits, salary reviews, pensions, redundancies that affect less than 20% of staff, individual staff grievances and individual staff disciplinary matters. (HR manager)

The constitution's restrictive nature was not welcomed by employee delegates to the staff forum. The inability to discuss salary related issues resulted in delegates christening the forum a "paper tiger".

5.2 *Interbank*

Internet bank was established by a traditional insurance company as part of diversification following the deregulation of the financial markets and at the time of the e-boom of the late 1990s. Separated formally from its parent, like Isar AG it is far removed from the 'traditional' image and practices of the finance sector. While the main operation of the new company is housed in a grey hangar of a new development built on the site of an old industrial plant, more than one hundred miles north of the national financial centre, the head office remains in London.

The early years of Interbank were very turbulent, the result of the start-up itself, an attempt at stock exchange floatation, and the bursting of the e-boom bubble. The decade since its establishment has been one of instability with continual insecurity over ownership.

Overall the company employs about two thousand two hundred employees with about fifteen hundred of them at the contact centre. Employees tend to be relatively young with an average age in the mid-20s. Most have taken employment at Interbank as their first job after graduation from higher education, with some working part-time while studying. Employee discontent was principally expressed through attrition, people leaving employment at Interbank. The labour turnover rate was usually around 20 per cent but sometimes as high 40 per cent. Occasionally a situation occurred whereby employees could be mobilised over conditions. Further, a trade union, recognised at other sites owned by the parent company attempted to gain recognition at Interbank, using the poor break times at the contact centre as an issue to organise around.

Although the initial impetus for establishing the Interbank Peoples Forum (IPF) came from the CEO and management as a means of avoid union recognition and comply with I&C regulation, the Forum has become something more substantive. Originally confined to bi-monthly cosy chats with the CEO, officers have increasingly seen their role as one of building relationships across the organisational hierarchy as well as beyond it into a supporting network of external organisations.

6. Autonomy

6.1 *Isar AG*

In terms of autonomy, huge question marks hang over Isar AG's staff forum. As indicated above, the setting up of the forum was first and foremost a management led exercise, a pre-emptive move to control what the forum could discuss, who sat on the forum, and what information could be reported back to the workforce. For example, though management supported an election process in choosing delegates to sit on the forum, three of the eventual six delegates indicated that either their line manager or CEO had approached them to put their name forward for election. These individuals became Forum officers by default because of the absence of other candidates. Nevertheless, as will become apparent below, managements' attempt to load the Forum with likeminded individuals was only partly a success. Of those managerial sponsored delegates only one was perceived to have remained an important ally, one manager interviewed referring to the individual in question 'as my favourite delegate'. Another major management concern involved issues prohibited from being placed on the Forum's agenda. This relates to managements' main fear, namely that the Forum could become a platform for collective bargaining. To ensure that employment terms and conditions remained within the scope of what line managers agreed with individuals the constitution ensured that so-called "salary related" issues were not part of the Forum's remit. As the following Forum delegate suggests, employee representatives are far from happy about the restrictive nature of the Forum:

I personally wanted benefits there, and the company said “anything that is salaried related would be out”. Because they can put a price on all the benefits they said “that was salary related.” So we do have a constitution but every time we seem to raise something we either get “that is to do with office services, that is noting to do with this forum or that is salary related, that costs money and is out of our scope”.

Another factor which highlights the Forum’s lack of independence concerns the restrictions placed on delegates’ ability to report back to the workforce. This concerns specifically the HR department’s blatant censorship of the Forum’s newsletter according to a delegate:

We put together a newsletter which gets heavily edited, watered down. If we raise things and we get a “no” from the company that tends to get edited out of the newsletter. Only the real positive things tend to make the newsletter which I think is wrong. I don’t think the newsletter gives a balanced view of what actually happened, and I think that is the general opinion and not just the people on the Forum. We are an intelligent company and the people can see through it, they see that it is a load of tosh.

Recently, though, the newsletter has been produced with very little difficulty, management required to make very few changes. However, as the following employee respondent ironically indicates, this has more to do with employee representatives becoming acquainted with management’s censorship guidelines than management being more lenient towards the newsletter’s content:

I now think we know who our audience is, and the audience is not just the staff. We have to consider HR as well... (HR) do put a bit of slant on it, which does not always reflect the true outcome.

Management’s apprehension towards the European ICE Directive saw it reluctantly establish the Employee Forum, a forum which would only be tolerated if management had the decisive say in how it functioned. However, as the proceeding sections demonstrate, pre-emptive approaches are no guarantee of employee delegates’ willingness to comply with the guidelines set down management.

6.2 *Interbank*

Initially as a means of excluding the trade union, which is recognised elsewhere within the parent company, a member of the HR Department was given the task of establishing an employee forum. This they based on the EWC constitution established by the parent company. At first this allowed for elected officers from different levels and departments within Interbank to meet about six times a year with the CEO for what were described as ‘fire-side chats’. Some elected representatives in the Interbank People Forum (IPF) became discontent with the limited role the body was playing; concerned as they said with ‘sausages in the canteen and car parking’ they pushed for a more significant voice in shaping the strategy and policy of the bank. This seemed to come in the role the IPF played, if ambiguous, in the attempt at union recognition. Two influential IPF officers, members of a trade union, while initially seeming sympathetic to the trade union advances still blocked recognition and pushed for an expanded role for the Forum. These two officers were given secondment to explore how they could develop the role of the forum. They successfully pushed for the election of three full time officers and an autonomous budget for an elected forum of twelve representatives drawn from the main and the two smaller sites of Interbank and sections of the workforce including management. At least formally the forum is jointly chaired by the CEO and an employee chair, one of the full time officers. As the employee chair explained:

I’ve been called the (IPF) manager but I’m not, I’m the employee chair of the IPF. The Forum is still jointly chaired by myself and ... the chief exec but, in reality, as he says “You do it all” and that’s something that’s evolved since 2002 and the advent of the full-time reps. He knows now that I do it full time and I get on with it. He trusts me to get on with it and when I meet with him on a regular basis he just says ‘how’s it going?’”

The two seconded employee representatives set about reforming the IPF. This included replacing the constitution with a ‘commitments document’, considered less like the bureaucratic formulation of both traditional financial institutions and that of the trade unions giving the IPF the mission to “represent the

voice of all (Interbank) People to make working life great and help drive superior business results”. Its objectives:

- To increase the level of employee involvement in changes and business initiatives which affect employees using effective consultation.
- To build and maintain effective relationships within all departments of (Interbank) through consultation.
- To represent independently and without prejudice the interests of (Interbank) People both collectively and individually.

The overall intention, at least explicitly, was to make it less like a trade union body, i.e. avoiding formal agreements. Also the full time IPF officers report to the HR Department but, they claim, this is no more than a formality. Like at Isar AG this may be because officers have learnt, or in this case may share, the same parameters of acceptability as corporate managers. In this they espoused an essential harmonious view of relations in the workplace so that, while they rejected the trade union approaches, they found an appeal in aspects of ‘partnership’.

Very sensitive to the accusation that they did not have autonomy from management, the IPF set out to establish its own identity. Importantly, also, the changes in the IPF meant an effective expansion in its role, characterised as moving to ‘playing it big’. Additional to the established quarterly information and consultation meetings with the CEO the IPF moved to ‘involvement at all levels’ establishing relations with as wide a range of managers within the company as possible. The idea of this was to allow a level of intelligence on any issues that may be arising and consultation at as early a stage as possible. The forum officers also began establishing relationships with outside bodies. Through these contacts, and particularly through the Involvement and Participation Association, it gained training and expertise. What might be expected of a trade union, by a more traditional employee representative body, is funded from their own budget. However, the budget is solely dependent on company management – the patronage of the CEO. Thus IPF may have a degree of autonomy from Interbank management in their control over

their activities, including their budget spending, but they do not have independence from it being dependent on them for the budget itself.

7. Legitimacy

7.1 *Isar AG*

Quite clearly the lack of autonomy employee representatives enjoy can be a threat to their legitimacy. Certainly, delegates to the Isar AG forum were more than conscious of this potential problem. In particular they were aware that the issues the workforce was interested in, terms and conditions, were formally excluded from the Forum's agenda. Delegates, however, felt a strong sense of responsibility to the people they represented. There was a strong commitment not just to appear a 'voice box to collate information about queries, questions and concerns'. Such concerns had the effect that Employee Forum delegates were very committed to demonstrating to the workforce that they were not the extended arm of the HRM department.

Although management had gone to great lengths to control the agenda, this did not deter employee representatives from raising salary related issues at Forum meetings. When interviewed employee respondents demonstrated, a strong commitment to representing the workforce, this at times to the annoyance of management. Delegates were quite subtle and strategic in the way they raised issues. A procedure was followed which involved delegates posing questions irrespective of the agenda's restrictive guidelines. They felt management might wish to know about issues that the workforce had raised. In this sense the delegation was able to place itself in a positive light, a conduit through which the workforce could enter into consultation with management.

One issue that has been raised on many occasions concerns maternity leave:

Therefore, we put it (maternity leave) forward at the staff forum and we said "Yes we are aware that we cannot raise it but we think you should be aware that it is being raised." Therefore, it is down to them (management) what they do with it, it is not something that we sit and discuss and say "This is what people are asking for." From my point of view if something

is raised, if people have come to us and asked us to put something forward we should do that. Whether we are allowed to actually sit down and talk about it is another matter, but at least we have raised it and then we can go back to that person and say “look we have raised it in the staff forum, it is actually something we are not allowed to discuss ourselves but HR are now aware of it.”

Raising unconstitutional issues and ensuring that issues discussed at meetings are correctly documented, is clearly a means of demonstrating to the workforce, and equally to the HR department, that the delegates are not “management lackeys”:

There are points we have raised and we say “look can we just minute it, that we did actually raise it? If you are not going to do anything about it that is down to you but make sure that it is in the minutes. That we brought it up.” So we are doing our part of the deal if you like.

Faced by a management team not always co-operative, Forum delegates, who after all were conscious that they cannot hide away in the confines of a Forum’s office like their German counterparts, have to return to the shop floor and work alongside their colleagues. For this reason, Forum delegates are constantly required to demonstrate their legitimate right to represent the workforce. As will be indicated below, delegates’ insistence that they are not “management lackeys” helps steer management into a cul-de-sac, one involving a legitimacy crisis for management should the workforce question the value of the Forum.

7.2 *Interbank*

One of the reasons that the IPF initiated its transformation was because of accusations, coming from many of the workforce (as well as the trade unions), that it was ‘management’s poodle’. It was also concerned that the consultations it was engaged in, like other non-union consultative bodies (Gollan 2007), mainly concerned ‘sausages in the canteen’ and car parking. Increasingly they presented an independent identity, which involved their own logo sported on sweatshirts and a banner. More substantively, however, this identity involved consultation on far more substantive issues, as well as being party to involvement with managers at all levels of the company. The

promotion of this independent identity involved the production of a promotional video, with the IPF presenting itself as both useful to management but also as, in the words of one employee who is featured in the video, 'like having our own little union'. Given that the IPF, unlike a trade union, is not dependent on recruitment of employees, this exercise must be seen as part of an attempt to establish an independent status and legitimacy amongst their constituents of both managers and employees.

While bargaining over anything is prohibited – this is anyway alien to an Interbank culture where people engage in frequent 'conversations rather than anything considered conflictual or confrontational' – there are consultations on all issues which may involve Interbank employees. So IPF do not bargain over pay and conditions, which are determined through grade benchmarking against other employers. However Forum officers do represent employees in grievances and take up individual cases which involve pay levels of individual employees'. As important is the fact that they are party to consultation concerning changes in the process of pay determination. To gain visibility, IPF officers hold monthly 'awareness days' on each of the sites, and are available to hear any grievances or to discuss problems with any employees who may approach them. These are also used as an informal hustings for candidates at IPF elections.

The IPF have become involved in all the areas where consultation may be expected in a traditional workplace and are the direct concern within ICE regulations. The corporate turbulence has meant continual change, and so IPF officers have also been involved in consultation over redundancies and transfers of employment resulting from buy-outs.

8. Efficacy

8.1 Isar AG

Finally, the efficacy of Isar AG delegates was severely hampered by problems associated with autonomy and legitimacy discussed above, and hence necessitated a high degree of skill in formulating and promoting policies supported by the workforce but opposed by management. As Hyman (1997:

311) notes, the question of efficacy needs 'to be viewed as relative to what is potentially attainable'. Undoubtedly, there were numerous factors which hampered the efficacy of staff forum delegates. First and foremost there was the issue of time, delegates complaining that they were often required to undertake staff forum duties, i.e. preparing for meetings, liaising with the workforce and other delegates, in their own time (usually dinner-break). According to the chair of the staff forum, the HR manager, 'Delegates are given what the company refers to as a reasonable amount of time to fulfil their Forum duties'. However, by not clearly defining what amounts to "reasonable" time allows line managers' to abuse their position of power by not respecting delegates' rights to undertake Forum duties. One respondent noted:

I imagine the time in the constitution is okay. It is whether we actually get it, whether our managers, whether our workload reflects this time, that we actually get this time.

When faced by such opposition, though, respondents were not reluctant to point out that management had favoured the establishment of the Forum. Generally delegates complained that they were not allocated enough time for Forum business. The time issue alone, however, was not the only variable which had a potentially negative bearing on the efficacy of employee delegates. The other factor concerned skill sets. As has proven to be the case in Germany for many decades, the ability of German works councils to formulate and implement policies depends very much on delegates being trained to undertake representative duties. All respondents indicated that, excluding the one day they spent with a lawyer to draw-up the constitution, they had received no training to support them in tasks on the Forum.

Delegates have been quite adroit, however, in addressing the skills deficit. Undoubtedly, their cause has been furthered by their own biographies. With the exception of one delegate all were former graduates with considerable experience in the industry. Hence, as a group they could draw on a considerable pool of knowledge. In addition they possessed a network of contacts in financial services which could be accessed. Combined these two factors helped the employee Forum delegates to often outflank management as well as offer the ability to draw-up well thought through policy changes. An

example of such a situation involved recent changes to the salary review, changes that management implemented without consulting the workforce. But, as the following respondent notes, such a move not only undermines the value of the Forum, but it also fails to consider that delegates can see through such underhand management manoeuvres in relation to contracts:

Again this is what we do. This is our job to load things monthly. It is how premiums work ... They did all this (salary review) without any consultation and they should have loaded it with around 4% to take into account changes in interest rates. This is what we do and they sometimes think they can get away with these things and they don't realise that we are actually quite intelligent people.

Finally, contacts that delegates have at other companies can prove an excellent source of information. It represents a key factor that contributes to their efficacy. This quite clearly proved to be case when management agreed to undertake a benchmarking exercise in connection to maternity leave. Although management argued, that its existing maternity leave policy (one that falls in line with statutory maternity leave) was in line with what it referred to as the "market value", namely what employees at other companies' were entitled to, delegates refused to accept such a stance. Staff forum delegates undertook their own benchmarking exercise which suggested Isar AG's policy was anything but in-line with what employees at other companies were entitled to:

They (management) respond by saying they have listened to us and that they have reviewed it (maternity leave) in the past and that they are in line with the market – end of story. This is often challenged – the Forum members want to see the benchmarking the company has done – but the company refuses to share this information. Like I said we work in employee benefits and we know lots of other people in other companies and people will do their own benchmarking. There was even an article in the Guardian which graded companies and the general benefits were there and if you placed us into those benefits we would have been right at the bottom. So we said "you say we are line with the market but everything we see says that we are not, prove it to us."

8.2 *Interbank*

One immediate contrast between Isar AG and Interbank forums appears the issue of time for officers. IPF has three full time officers whose time is fully funded by the company. The remaining eight or nine employee forum members receive time to perform their duties. This, though, has to be agreed with their line manager and can vary dependent on demands. Interestingly, such an arrangement does not appear to be problematic. This was the result of the changes that occurred, of ‘playing it big’, initiated two years after the forum was founded. To a large extent this put the forum into the hands of the employees, the role of management becoming more notional, giving them both time and control over a budget. Importantly the independent budget has allowed the reps to undergo a range of training. As the employee chair explained:

One of the beauties about ... having your own budget is the fact that I can decide, we can decide when, how and who actually does the – does the training. And – and who it’s for, so it’s not HR thinking we’ll do this training for you.

The existence of three full time officers, the employee chair and ‘A’ and ‘V’ (see below), also means that IPF consultation has expanded dramatically beyond the original bimonthly meetings with the CEO. Again, as the employee chair relates:

[O]ne of the advantages of us having three full time people about is that each one of us has different relationships. ... So we’ve got, we’ve got (A) and (V) both meeting the head of banking once a month. So we’ve got two of our reps meeting the head of banking on a monthly basis. ... I’m meeting banking products director once a month. I’ve got meetings with – I’ll meet the chief exec personally once a month. We’ve got (A) meeting the chief information officer, head of technology, once a month. You’ve got all sorts. There – so those sorts of things at the top are going on. Then we’ve got well, people leaders. We’ve got meetings with them fortnightly. I’ll meet with the head of borrowing every fortnight. So we’ve got – it’s just so regular. It’s so regular with no – no particular agenda, just what’s going on, what you’d like to tell me, what – what you want from me, how can I help you?

The changes have not just meant an expansion in I&C activity but also into what may be considered more traditional, even trade union, areas. IPF members act as health and safety reps, and at least the full time officers take on a caseload in individual discipline and grievances. However, what might characterise their approach, as intimated above, is that essentially they see their role not as an advocate of, individual or collective employee interests, but of creating harmony and consent within the employment relationship.

The reason for the success of the IPF may be that it has not challenged management interests or their agenda but reinforced and supported it. In one sense, then, if we apply Hyman's (1997) notion of representation, the full time officers of the IPF are not representative. IPF officers have been a relatively stable part of the Interbank environment with long service in the finance sector or even transferred in by the parent company at the founding. Their biographies, therefore, were not the typical Interbank employee in their twenties just starting out in their career and prone to exit, rather than exercising their employee voice. All three full time officers have long experience within the finance sector, mostly with the parent company, which can be drawn on and which gives them authority. The employee chair also had around seventeen years experience as an employee representative with a trade union which gave him further resources to draw on. However this very experience seemed to have made him critical of the bureaucratic procedures of 'the brothers'; that trade unions had become distanced and impersonal. Due to the unstable ownership of Interbank the IPF established bonds with unions representing workers at other sites and another employee forum in the company developing a strategy to deal with potential redundancies. The forum officers, while distancing themselves formally from trade unions, have participated in external organisations where trade unions have been present and therefore gained useful advice and support for their own activities. In addition, the beginnings of an informal network of employee forums could be observed. This network represented a source of "best practice" in which forums could gain valuable experience of individual and collective representation in such eventualities as redundancy and transfer.

9. Comparison of factors

The emergence of new employee representative structures at Isar AG and Interbank are symbolic of quite wide-ranging changes sweeping through British industrial relations in recent years. The establishment of such employee bodies is, as other researchers have also noted (see Terry 1999; Gollan 2007), often a management driven initiative. In both of our two case studies presented in this article management's commitment to these new forums comes from an interest in customising any eventual representative body to meet their own particular requirements along with immediate compliance with the new regulation. Conscious that national and European law have opened up new representative avenues for employees, management at both Isar AG and Interbank were committed to a pre-emptive strategy. Hence, they could draw-up a constitution which ensured them ultimate control over such a body, control which would influence the Forums' autonomy, legitimacy and efficacy.

Table 1 draws from our analysis above compares the two cases. It demonstrates that while one set of these actors, the managers, sought to write the script for the others to follow, employees were reluctant to adhere to their lines and improvised their own action. Obviously one has to guard against drawing too broad or general conclusions from a mere two case studies especially when the forums in question are explicitly non-trade union bodies and supported by management as such. This is despite the fact that such forums clearly offer employees a collective voice. The two cases are also both in the same sector, with its own traditions, which may make any conclusions less generalisable beyond finance and banking. These were also essentially two green field sites with no history or tradition of trade unionism. The parent company of Interbank had recognition on some sites but nevertheless the forums were established where no other collective voice was present.

A number of factors appear to have influenced Forum delegates' commitment to attaining a degree of autonomy. Firstly, delegates were shown to be disappointed by management's lack of respect for their new office. This expressed itself in a general opposition on the part of delegates being treated

as nothing more than the extended arm of the HR department. Although delegates accepted they had an important communication role to play between management and the workforce, such a role had to include a degree of participation in influencing company policy. A defining factor appears closely linked then to the fact that respondents in their day-to-day work were used to being consulted if not included in decisions – their expertise often sought.

Table 1: A Comparison of Isar AG and Interbank

| | Autonomy | Legitimacy | Efficacy |
|-----------|---|---|--|
| Isar AG | Management influence over election Prohibition of 'salary related' issues Control over report back and the newsletter | Not management lackey? Getting it on the agenda | 'reasonable' amount of time for forum activity Skill deficit Arguing policy Maternity leave |
| Interbank | Amicus attempt recognition in line with parent company agreement Initial Forum 'fireside chats' with CEO about 'sausages and car parking' replaced by 'Playing it big' and commitments document Three full time officers 'Involvement at all levels' | Attempt to construct independent identity Awareness days Consultation at all levels Undertakes individual casework in discipline/grievance cases | 3 full time officers plus 'reasonable' time for others Own training budget |

For this reason they did not necessarily take kindly to the dictate of management. As a consequence of managements' attempt to control the Forums a sense of politicisation amongst delegates was to be observed. Although such opposition would not appear to be the result of an emerging class consciousness, it nevertheless had the effect of placing divisions between management and Forum delegates. In the case of Isar AG, this was emergent around such issues as maternity leave, but at Interbank had emerged much earlier and had meant the shift to 'playing it big' with the key employee actors successfully re-shaping their forum to give it greater significance within employment relations, both individual and collective, within the company.

In both cases Forum delegates were opposed to playing the role of mere extras. Delegates were anxious to demonstrate that they possessed their own script from which to read, as well as a willingness to draw from their own experience and express their own interests. Even where delegates were hand-picked by management, the individuals in question were committed to distancing themselves from their initial benefactor. Managements' customising project was clearly not the unmitigated success it was intended to be, far from it, autonomy proved to be a contentious issue.

Another factor that influenced delegates' desire to distance themselves from management involved the question of legitimacy, in particular the workforce's view of delegates' position within the Forum. At one level this concerned the above issue of not appearing to be a "management poodle". This was because delegates noted the workforce had a right to a collective voice, a collective voice that could only be realised if the Forum remained independent of management's control. Combined, these factors ensured that delegates were committed to moving the goalposts initially set down by management. In Interbank the Forum has gone from being a "sausages and car park" structure to one which now possess three fulltime officers and is consulted by management on a wide-range of issues. The developmental process mirrors many of the research findings on EWCs. Researchers demonstrating that though such bodies often have limited rights to start off with, this does not deter employee representatives from attempting to broaden its initial management remit (Lecher et al. 2001; Knudsen et al. 2007; Huijgen et al. 2007; Whittall 2007, 2009; Kotthoff 2006).

As for the Isar AG Forum, progress could also be observed. Delegates were shown to be quite innovative in challenging the restrictive representative parameters set by management, so much so that occasionally management were forced to acquiesce to delegates demands and discuss salary related issues formally excluded by the constitution. As at Interbank, delegates were partly able to wrest control of the Forum from management. Of course, its next challenge involves formally extending the Forum's agenda as well as improving the time resources that delegates have at their disposal. However, even at Interbank, the forum remains dependent on senior management, and particularly the incumbent CEO, on whose patronage their

budget – which pays for training and facilities as well as the salaries of officers – is ultimately dependent.

10. Conclusion

When Hyman (1997) speculated on the future of employee representation in Britain more than a decade ago he was writing at the time when there was some belief that the return of a Labour government might reverse the decline in trade union membership. Any such optimism would now appear to have been misplaced. Certainly, a return to traditional British employment relations has failed to materialise. The revival of trade unions has not occurred, membership has stagnated (Mercer/Notley 2008) and recognition remains marginal outside of the public sector (Kelsey et al. 2006).

In addition, British trade unionism has faced the arrival of the ICE regulations; a development which some commentators believed might lead to a revival of workplace organisation and action. On the other hand it has not gone unnoticed that employee forums represent just another competitor for trade unions in winning the hearts and minds of employees. While there is little systematic data currently available on the number and spread of non-union employee representative bodies established in the UK, it is clear that some have been established as a direct competitor to trade unions where trade unions are not recognised but also where they already exist and are recognised. This could even be conceived as a managerial strategy to marginalise trade unions. The two case studies presented in this article, though, suggest the existence of a silver lining: management's response to ICE (an attempt to hijack employee forums) producing a conflict situation in which employee delegates might be less resistant to trade union organisation. Of course any extrapolation from a mere two cases must be tenuous, and there are some peculiarities which may colour any conclusion. It does appear, however, that the very development of a collective voice, the result of management's attempt to control the forum, can mobilise employees. Certainly historical experiences of trade union revival are that 'new unionism' may appear outside, and in antagonism to, established unions. For example, as demon-

strated amongst mass production workers in the USA in the 1930s (see e.g. Fine 1969).

The question trade unions have to address involves discerning how they can tap into employees' disenchantment with the way employee forums function under a unitarist regime. Certainly, there exists another historical precedent in the form of the German situation shortly after the Works Constitution Act (1952) came into effect that British unions might wish to reflect on. As in Britain today the work of German works councils was undermined by a lack of resources. Interestingly, the solution in Germany involved unions providing works councils with external support in the form of expertise and training. By making themselves a valuable asset for works councils, German unions could go some way in neutralising the tension between plant and industrial level representation (Whittall 2005, 2007).

Theoretically British unions could adhere to a similar strategy. But for this to happen British trade unions, irrespective of the question of resources, would need to reach out and embrace employee forums, an act which requires them to break with the past. Traditionally there has been little enthusiasm in the UK for a system of employee representation resembling the works council system in Germany. Hence, trade unions will be required, like management, to respect the autonomy of employee forums. As one respondent indicated trade unions have to acknowledge that employee forums do not represent a modern shop-stewards committee, but rather a body which first represents the interests of employees within the company and then possibly the interests of the union. The real litmus test for British trade unions ultimately involves a willingness to agree to a dualistic system of British employee relations, along the lines developed in Germany over many decades. However there appears evidence that once the Pandora's box of collective voice is opened, in whatever form, it is hard to subsequently close it. What may be more difficult is whether we are seeing a nascent works council system in the UK, following employers responses to the ICE regulations, or either a symptom of the revival of established trade unions, or the very preliminary founding – perhaps unintentionally – of a new mechanism for employee voice and mobilisation.

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